

United States District Court
for the Dis of N.H.

U.S. DISTRICT COURT
DISTRICT OF N.H.
FILED

2013 JUL 24 A 10:54

Petitioner: Dominic Ali 7/19/2013

v.

Defendant: Edward Reilly, Warden

Civil no. 12-cv-185-JL

Petitioner's Memorandum of Law in
Support of his motion to dismiss indictment
858 from product of 2004 Nolo contendere plea
Conviction and sentence in 2008 for good Cause.

NOW COMES, Dominic Ali, sui Juris, respect-
fully requests this Honorable Court to grant
this Memorandum of Law for the following
reason states below;

FACTS

The petitioner has a writ of Habeas
Corpus doc No 1) filed pursuant to 28
U.S.C 2254, with this Court claiming
violation of his Constitutional Rights states
and Federalists.

In part, the 6th Amendment rights to a fair trial by jury and the 14th Amendment rights to a due process of law, in Claims A and B. and newly identified claims 10 and 11 following the numbering of claims in the May 20, 2013, report and recommendation by this Honorable Court.

Legal Argument

The States with full reckless discriminatory conduct of prejudice motivated by racial bias, divide single indictment into multiple counts, which resulted in jury confusion that is primarily purpose or effect is to appeal to the Grand Jurys sympathies or to trigger other mainstays of human action that might cause the Jurys to base its decision on something other than the established proposition in the case. see; T.4-9.

2 of 10 The Court held a hearing on the motion to dismiss indictment on August 27, 2008, after considering of the Pleading argument, and applicable of law, Justice (G. Abramson) who only preside over this motion denies his requests.

See; petitioner's Rule 7 notice of appeal filed with this Court (10/17) that her decision failure to dismiss indictment prejudice the petitioner case is resulting in an unreliable or fundamentally unfair outcome of the proceeding and substantial miscarriage of justice when she denies the petitioner's motion and rendered a decision that was prejudice in light of prevailing law by the reviewing authority, that her conduct raised reasonable doubts of the judges impartiality growing out of the judicial proceeding. When she uses intimidation or allows it by the states, that on Feb, 2012, at the hearing for the petitioner on his 2254 writ, she with a loud voice of intimidation, states "that the Supreme Court already vacate one of your indictment"; when in fact, over charging was the states factual entrapment of the petitioner, that the State by itself ask for the indictment be vacated from the petitioner's conviction and sentence, that his due process of was violated when the trial Court permits a petitioner to be tried upon an indictment which the state knows is based on confusion and prejudice. See; Attachment #)

The petitioner contend that the trial Court and the State's behavior was so improper and prejudicial, that it created biased grand jury. Not only that, the grand jury in this case has been overreached or deceived in significant way where perjure testimony has been knowingly presented, see; T.7. the victim testified on trial that she was hit 30 times with a pepsi can in the head, where the state know her testimony is best of false allegation, but the reason to allow it is for intimidation.

In United States v. Calandra, 414 U.S. 338 (1974). the Supreme Court discussed the ancient and solemn responsibilities of the grand jury:

"The institution of the grand jury is deeply rooted in Anglo-American history. In England, the grand jury served for centuries both as a body of accuser sworn to discover and present for trial person suspected of criminal wrongdoing and as a protector of citizens against arbitrary and oppressive government action. In this country, the founders thought the grand jury so essential to basic liberties that they provided in the 5th Amendment that Federal prosecution

for serious crimes can only be instituted by a "presentment or indictment of a grand jury." CF. Castillo v. United States, 350 U.S. 359, Ed (1956). The grand jury's historic function survive to this day. its responsibilities continue to include both the determination whether there is a probable cause to believe a crime has been committed and the protection of citizen against unfounded criminal prosecution. Branzburg v. Hayes, "408 U.S. 665" (2d 1972)." (Footnote omitted).

Under the Constitutional scheme, the grand jury is not and should not be a captive to any of the three branches" Cheney, 549 F.2d at 1312. if the grand jury is to accomplish either of its functions, independent determination of probable cause that a crime has been committed and protection of citizen against unfounded prosecution, limits must be set on the manipulation of grand juries by over-zealous prosecutor.

On April 17th, 2008, the State indicted the petitioner with class A Felony, and two class B Felonies and 4 class A misdemeanors that without proving it. The fact that probable cause may exist to support the indictment which the State may say, it does not end the Court inquiry, since the grand jury "does not determine only that probable cause exists to believe that the defendant committed a crime, or that it does not" the grand jury is not bound to indict in every case where conviction can be obtained." *Id.* For example, it may "reject an indictment that, although supported by probable cause, is based on government passion, prejudice, or injustice". At least one Cir has indicated that is improper for the States to introduce evidence of prior bad acts to a grand jury. See, United States v. Hagan, 712 F.2d 757 (2d Cir 1993). For example, the conviction of protective order in 2004, which the state uses in support of the grand jury's indictment, and that is just one of the prejudice. The policy is predicated on the belief that deliberate deception of the court and the jury by presentation

of evidence known by the states to be false "involves corruption of the truth-seeking function of the trial process." See, United States v. Agurs, 427 U.S. 97, 2d (1976) and is "incompatible with rudimentary demands of justice," Giglio v. United States, 405 U.S. 150 (citation omitted). Moreover, deliberate deception is inconsistent with any principle implicit in "any concept of ordered liberty," Napue v. Illinois, 360 U.S. 264, 2d (1959) and with the ethical obligation of the state to respect the independent status of grand jury.

Standard for Criminal Justice 3-3.5 3-48-4-49 (2d ed 1980). The "cardinal purpose" of the grand jury is to shield the petitioner against the discriminatory conduct of prejudice motivated by Racial Bias when the State are charge the petitioner and the trial court acted unknowingly and stood by, but not against the State excesses and the protection is destroyed if the state may proceed upon an empty indictment.

7 of 10 More specifically, the petitioner argues that dismissal is proper because the trial court and the state has knowingly allowed the entry of false information into the record

of the proceedings. Brink of Nova Scotia at, 487 U.S. at 263. The Court said that the prejudicial inquiry must focus on whether any violations had an effect on the grand jury's decision to indict. If violation substantially influence the decision to indict or if there is grave doubt that the decision to indict was free from such substantial influence, the violation are not harmless. *Id.* at 487 U.S. at 256 and 263.

The 5th cir has likewise recognized that dismissal under the court's Supervisory power requires a showing of actual prejudice to the accused. In the instant case, ① Ali's 2008 conviction and sentence for second degree assault, ② Ali's 2004, conviction use to enhance the second degree assault, that was not based on the facts not decided by the jury, ③ Ali, 2008, conviction violated his 6th and 14th Amendment right to due process and a fair trial, *Id.*, claims 2-4 and 6-11. Filed with this Court. All these violation prejudice the petitioner's rights and his case. United State v. Cases, 425 F.3d 23, (C 1st cir. 2005) Holds that a court may invoke its Supervisory power only where there

is "a nexus between the improper prosecutor practice and prejudice to the petitioner's" In this case, which the state knew the victim's testimony to be false, he did nothing to correct that his tactical intransigence, every one knew the game. Six attorney's violate the petitioner's Sixth Amendment. Attorney Anthony L. Introcasa, told the petitioner that "THERE RACES" but the petitioner refused to believe that law was written by racial bias. For those Counsel's this is nothing but "check list" of convictions.

In *Basurto*, the Court held that where the State had actual knowledge that the indictment is based partially on perjured testimony, when the perjured testimony is material and when jeopardy has not attached he is under a duty to immediately inform the Court, opposing counsel and the grand jury in order that appropriate action can be taken. The Court held that failure to do so violates the Fifth Amendment Due process clause. *Basurto*, 497 F.2d at 785-786. The

9 of 10 prejudice which the Courts look to is prejudice in the proceeding in 2008, conviction and sentence.

This Honorable Court has a duty to interfere because the States abused its discretion to such an extent as to be arbitrary and capricious and violative of due process of law, of the petitioner. United States v. Welch, 572 F.2d 1359 (9th cir. 1978). The State has a duty of good faith. United States v. Basulto, 497 F.2d 781 (9th cir. 1974). Dismissal of the petitioner's indictment 858 is proper because in which the States obtained the indictment represented a serious threat to the integrity of the Judicial process. See; United States v. Samargo, 607 F.2d 877 (9th cir 1979).

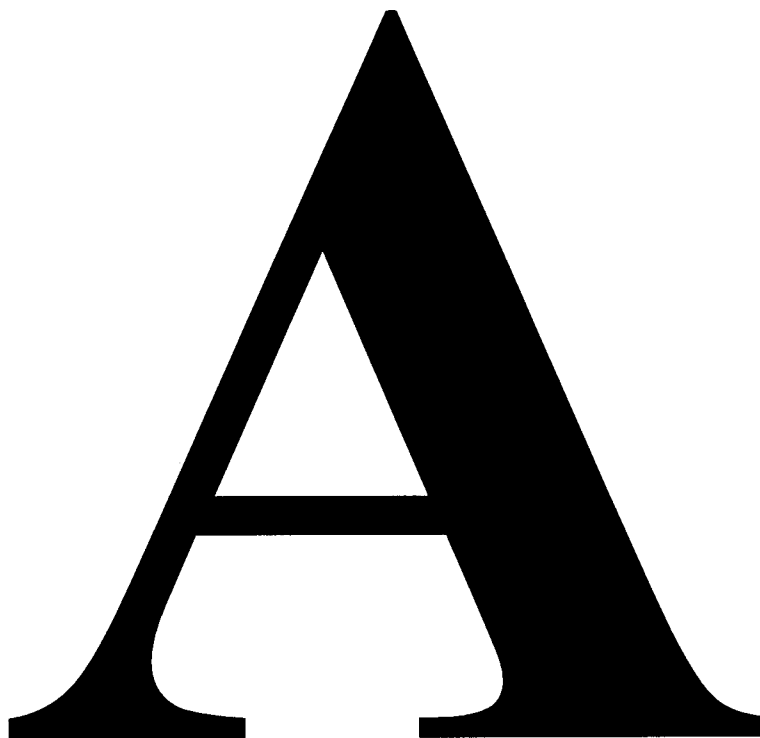
Conclusion

The petitioner Dominic Ali, respectfully requests this Honorable Court to grant this Memorandum and the rest of the motion to dismiss indictment as this Honorable Court deems right and just.

Certificate of Service

I, Dominic Ali, declare under penalty of perjury, that the fact stated or true and a copy of this document is forwarded to the AG, Office this Date, First class postage address U.S. Mail - C:file.

Dominic Ali 81829
138 East Wilson Rd
Berlin, NH 03570
C:file.



III. THE TRIAL COURT PROPERLY DENIED THE DEFENDANT'S MOTION TO DISMISS ON DOUBLE JEOPARDY GROUNDS.

The defendant argues that the trial court erred in denying his repeated motions to dismiss one of the second degree assault charges on double jeopardy grounds. DB 16. He then argues in the alternative that the court committed plain error when it sentenced him for both charges. DB 18-19. There is no merit to the claim that the trial court should have dismissed one indictment, because the two indictments alleged different facts and mental states, and thus represented alternative theories of guilt. *See United States v. Platter*, 514 F.3d 782, 786 (8th Cir. 2008) ("Generally, the government is free to prove a defendant's liability for one criminal offense using multiple theories of guilt.").

The State, however, concedes that under the facts of this case, the two charges meet the "same evidence test," *State v. Hutchinson*, 137 N.H. 591, 596 (1993), and the dual convictions and sentences violate double jeopardy. Therefore, it agrees that this Court should vacate the conviction and the sentence for second degree assault under indictment 08-S-859. *See Roy v. State*, 76 S.W.3d 87, 99 (Tex. App. 2002) ("The proper remedy is to modify the judgment by vacating the lesser sentence and conviction").

-17-

CONCLUSION

For the foregoing reasons, the State respectfully requests that this Honorable Court affirm the judgment below, with the exception that it should vacate the conviction and sentence on indictment 08-S-859. 3 1/2 7

The State requests a 5-minute oral argument.

give up

Respectfully submitted,

THE STATE OF NEW HAMPSHIRE

By its attorneys,

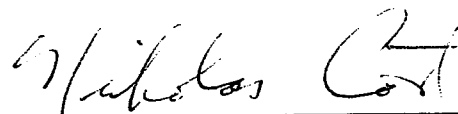
Michael A. Delaney
Attorney General



Nicholas Cort, NH Bar No. 236
Assistant Attorney General
Criminal Justice Bureau
33 Capitol Street
Concord, N.H. 03301-6397
(603) 271-3671

November 30, 2009

I hereby certify that two copies of the foregoing were mailed this day, postage prepaid, to Paul Borchardt, Assistant Appellate Counsel, counsel of record.



Nicholas Cort

(Attachment B)

THE STATE OF NEW HAMPSHIRE
SUPERIOR COURT

Coos County, SS

Term 2013

Dominic Ali

v.

Edward Reilly, Warden

Case No# 214-2012-CR-00178

Petitioner
Defendant list of potential witness

Now Comes, Dominic Ali, sui juris, respectfully
moves this Honorable to grant this motion for the
following reason states below;

- 1- To allowed Mrs. Julie Sennerville Youth
Development Specialist who has known Mr. Ali
comparative inability to speak or understanding
the English language and the barrier that Mr. Ali
possess in school in 2004, were she had help
Mr. Ali in his Court appearance for the unlawful
possession of alcohol and the arrest of the
violation of the protective order were she ~~has~~ ask
Manchester District Court to assist Mr. Ali with
an interperter during his proceeding in 2004 -
And she also has known Mr. Ali's grade
level in 2004.

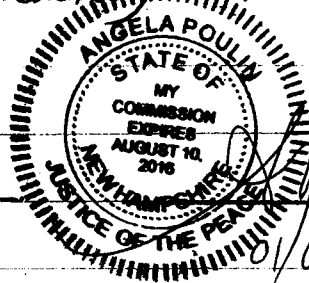
2. Mrs. Julie Seanneville would also provides the Honorable Court with information about the plaintiff character when she read the plaintiff's letters in 2004 that she sent the defendant about her dishonesty and false statement she made in 2004. (603) 626-7941.

3. Allowed Mr. Michael Dunican who has known Mr. Ali from 2004 to 2006, and the language barrier that Mr. Ali possess. And he also has bailed Mr. Ali from arrest in 2004, of the (DRP) and known the plaintiff's phone calls at his job hereafter after she had filed the false statement with the Goffstown P.D. in 2004. When Mr. Dunican ask the plaintiff not to call his company any more. (603) 624-6288.

Date 1/2/2013

I, Dominic Ali, certify that a copy of this potential witness who would testify in Mr. Ali case with this court has been informed that in would Assistant County Attorney Kathleen A. Broderick, with this copy.

Dominic Ali
1/3/13

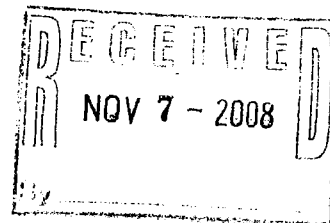


Angela Poulin
01/05/13

B

Youth Empowerment Program
Southern NH Services, Inc
49 Manchester Street
Manchester, NH 03101
(603) 626-7941

Hillsborough County Superior Court
300 Chestnut Street
Manchester, NH 03101



November 7, 2008

Your Honor:

My name is Julie Senneville and I am the program coordinator for the Youth Empowerment Program in Manchester, NH. The Youth Empowerment Program is a federally funded employment and training program that provides academic, work readiness and occupational skills training to young adults.

I had the pleasure of working with Dominic Ali from October 29, 2003 to June 29, 2005. When Dominic completed the training he was working full time and continuing to study for his GED test. I provided him monthly follow up services and he continued to be successful. Even after follow up services were over, he continued to maintain regular contact with staff.

During the time that I worked with Dominic, I found him to be polite and respectful. He was an eager student and really wanted to finish his schooling. He interacted well with his fellow classmates and worked well in group settings. He never was a behavior problem and never manifested negative behaviors in the classroom setting. He also received favorable reviews from his employer; there were never any complaints from his job site.

Respectfully submitted,

A handwritten signature in cursive script that reads "Julie Senneville". The ink is dark and the signature is fluid.

Julie Senneville
Youth Development Specialist

North American Equipment Upfitters, Inc



November 10, 2008.

To whom it may concern;

Dominic Ali was employed by North American Equipment Upfitters, Inc. from September 29, 2004 through October 13, 2006. It was our understanding that Dominic left our employment to pursue educational studies at the time of his resignation.

While in our employment Dominic was an excellent employee that worked well with others and had become one of our best welders. Dominic would be considered for a position in the future with North American and would be an asset to any company that chose to hire him.

Respectfully,

Michael Dunican
President

Dominic Ali 81229
138 East Milan Rd
Berlin, NH 03570

U.S. DISTRICT COURT
DISTRICT OF N.H.
FILED

2013 JUL 24 A 10:54

U.S.D.C.

Office of the clerk

7/18/13

55 Pleasant St R 110

Concord, NH 03301

Dear Mr. clerk;

I'm filing a memorandum of law in support of my motion to dismiss indictment 85B, that I was challenging from the start of the case, under ground of due process of law. to the already identified claims 2-4 and 6-11, filed with this Honorable Court, and for good cause showing in this case. I couldn't file this memorandum at the same time as this Court may advise because the law library was close for a week, we only get 2 hours a week, sometimes none. So, I'm making this possible as I can.

The list of potential witness, the State already have one, and I'm sending them another copy as attachment "B". The state put an objection to this list, don't why, These witness knew me for years. they bail me out from these issues of protective

order, in 2004.

As I advised this court with my issues over the trial transcript or the tape that the Goffstown District Court sent me, I have strong issue of who was in Court in the 2004 nolo conviction that I'm challenging right now. I reviewed the tape and it sound funny.

According to the law directory and day book, of 2011, Justice Michael J. Ryan is at Nashua District Court. My motion to withdraw nolo contenders was filed on Nov 12, 2010, and the hearing was held on Feb, 2011, with Justice Paul H. Lawrence. Please be advise, on the transcript, Justice Paul H. Lawrence ask me who was the Judge was and I told him I don't know, in 2004, the State argued their position on the record, because I remember the Judge told me don't come to Goffstown if you do, I will lock you up for five years. but this statement is not on the tape that the Court sent me, and my lawyer argument too.

I will be more than happy to send those two tape to this Court for investigation of why most of the record is not there and I have doubt whos the Judge. I do remember the Judge was over weight and looking mean at me,

who is should justice Michael J. Ryan - for
Fact I need the 2004 proceeding transcript
so I can file it with this court for perjury -
I don't doubt my self any more, something is
funny with this case. I had two inmates listen
to the tape and the words use and they
confirm my suspicion, that this the same person
on the tape, "BOTH TAPES" with out me telling
them it should be different people. The proceeding
went on to the waving my rights, which you
can not hear the person who support me to me
in court. I want investigation of this transcript
and if this court would order the transcript in
writing. I have no doubt, there is a criminal
investigation here.

If you have any question, or wants
to look at these tapes, write me ASAP.

